

**SUBCONTRACT FOR  
MENTAL HEALTH FIELD RESPONSE**

**MARCH 1, 2024 – JUNE 30, 2025**

THIS AGREEMENT is by and between the City of Kirkland ("City"), a code city and municipal corporation of the State of Washington, and **Regional Crisis Response Agency** ("Agency"), a Washington nonprofit corporation organized under chapter 24.06 RCW.

WHEREAS, the Regional Crisis Response Agency was formed as a separate, independent governmental administrative agency created through interlocal agreement between the Cities of Bothell, Kenmore, Kirkland, Lake Forest Park and Shoreline as a coordinated regional effort to provide enhanced public safety and emergency response services, particularly with respect to crisis response awareness, support, and resource referral for community members in crisis with underlying behavioral health conditions; and

WHEREAS, the City of Kirkland serves as the fiscal agent for the Agency and the City of Kirkland has been awarded a grant for Mental Health Field Response, Award number MHFR-23-003, by the Washington Association of Sheriffs and Police Chiefs ("WASPC"); and

WHEREAS, the City of Kirkland desires to utilize this grant to fund mental health field response services provided by the Regional Crisis Respond Agency; and

Now, therefore, in consideration of the mutual promises, terms and covenants herein set forth, it is agreed as follows:

1. Services. Agency shall provide to the City and to the residents of the Eastside the services as set forth in **Exhibit A** to this Agreement entitled "**Scope of Work,**" which exhibit by this reference is incorporated herein. In performing such services, the Agency shall at all times comply with all Federal, State, and local statues, rules, and ordinances applicable to the performance of such services and the handling of any funds used in connection herewith to include, 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2. Compensation. The City of Kirkland shall pay Agency for completed services rendered under this Agreement as set forth in **Exhibit B**, "Compensation and Method of Payment." Said amount(s) shall be the total compensation for all services performed by Agency, including all reports, supporting data, supervision, labor, supplies, materials, equipment, or the use thereof and for all other necessary incidentals. Agency shall submit a statement to the City Manager or designee, no less than quarterly, together with supporting documentation to the City no later than ten working days after the close of each quarter. In no event shall a total of all payments for completed services rendered under this agreement exceed the amount(s) set forth.

Agency agrees that the services for which it seeks compensation under the terms of this Agreement shall be or have been performed solely for the residents of the City of Kirkland.

3. General Administration and Management. The City Manager or designee shall have administrative responsibility for the City's performance under this Agreement and shall review and may approve for payment all statements and bills submitted by Agency to the City for its performance under this Agreement. The Executive Director of Agency shall be responsible for overall administration of the services by Agency under the terms of this Agreement and for coordination with the City. Such coordination shall be accomplished through the City of Kirkland Human Services Manager.

4. Recordkeeping/Documentation.

- A) Agency shall submit reports outlined in **Exhibit C, "Reporting Requirements."** Agency shall maintain records and accounts including personnel, property, financial, and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Agreement and other such records as may be deemed necessary by the City to insure proper accounting for all funds contributed by the City to the performance of this Agreement in compliance with this Agreement. If this Contract involves federal funds, the Agency shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.
- B) These records shall be maintained for a period of six (6) years after termination of this Agreement, unless permission to destroy them earlier is granted by the Office of the Archivist in accordance with RCW chapter 40.14 RCW and by the City. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C) The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by the City and any other governmental agency so authorized by law during the performance of this Agreement. The Agency shall provide every assistance requested by the City during such visits. In all other respects, the Agency shall make the foregoing records available in a timely manner to the City for inspection and copying upon request. Agency will submit annually an independent financial audit and for non-profit organizations, a roster of the agency's Executive Board, including terms and residence.

5. Duration and Termination of Agreement.

- A) **The term of this Agreement shall be effective March 1, 2024 and end effective June 30, 2025,** unless earlier terminated.
- B) Either party hereto may terminate or suspend this Agreement at any time with or without cause by giving ten (10) days' notice to the other party in writing. Termination or suspension shall be effective ten days after the receipt of notice thereof by certified mail.
- C) If Agency's insurance coverage as required by this Agreement is cancelled for any reason, the City shall have the right to terminate this Agreement immediately.

D) In the event the City terminates or suspends this Agreement, Agency shall be entitled to receive just and equitable compensation for any satisfactory services rendered prior to the effective date of termination or suspension.

6. Hold Harmless/Indemnification.

- A) To the greatest extent allowed by law the Agency shall defend, indemnify, and hold harmless the City and the Washington Association of Sheriffs and Police Chiefs and each of their officers, officials, employees, and volunteers (the "Indemnified Parties") from any and all claims, injuries, damages, losses or suits (including attorney fees) arising out of or resulting from its negligence, misconduct, or breach of any of its obligations in performance of this Agreement.
- B) In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Agency and the Indemnified Parties, the Agency's liability hereunder shall be only to the extent of the Agency's negligence.
- C) It is further specifically and expressly understood that the indemnification provided herein constitutes the Agency's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.
- D) The provisions of this section shall survive the expiration or termination of this Agreement.

7. Insurance. The The Agency shall procure and maintain for the duration of the Agreement insurance, as required in this Section, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Agency, its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

The Agency's maintenance of insurance, its scope of coverage, and limits as required by the agreement shall not be construed to limit the liability of the Agency to the coverage provided by such insurance or to otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope and Amounts of Insurance

Agency shall obtain insurance of the types and limits described below:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and shall be atleast as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors, personal injury, advertising injury, and liability assumed under an insured contract.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

1. The Agency's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Agency's insurance and shall not contribute with it.
2. The Agency shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

C. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

D. Verification of Coverage

Agency shall furnish the City with original certificates and a copy of the amendatory endorsements evidencing the insurance requirements of the Agency before commencement of the services.

E. Failure to Maintain Insurance

Failure on the part of the Agency to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Agency to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Agency from the City.

8. Independent Contractor. Agency and the City agree that Agency is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Agency nor any employee of Agency shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City, except as fiscal agent of the Agency, shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance program, or otherwise assuming the duties of an employer with respect to Agency or any employees of the Agency.

9. Assignment. The Agency shall not assign, transfer or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Agreement without the prior written consent of the City. Said consent must be sought in writing by the Agency not less than 15 business days prior to the date of any proposed assignment, transfer or subcontract. The Agency shall deliver to the City with its request for consent, such information regarding the proposed assignee, transferee or sub-contractee, including its proposed mission, legal status, and financial and management capabilities as is reasonably available to the Agency. Within 15

days after such request for consent, City may reasonably request additional available information on the proposed assignee, sub-contractee or transferee. If the City agrees to give its consent, this section shall nevertheless continue in full force and effect. Any assignment, transfer or subcontract without prior City consent shall be void.

10. Non-Discrimination. Agency shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

11. Additional Terms. The Agency shall comply with the Additional Requirements as stated in **Exhibit D**.

12. Contract Management. Agency’s Grant Manager will have prime responsibility and final authority for the services provided under this Agreement and be the principal point of contact for the City Grant Manager for all business matters, performance matters, and administrative activities.

City’s Grant Manager is responsible for monitoring the Agency’s performance and will be the contact person for all communications regarding Agreement performance and deliverables. The City Grant Manager has the authority to accept or reject the services provided and must approve Agency’s invoices prior to payment.

The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

<b>AGENCY</b>		<b>CITY</b>	
<b>Grant Manager Information</b>		<b>Grant Manager Information</b>	
Name:	Brook Buettner Executive Director	Name:	Eric Karp Sergeant
Address:	123 5 <sup>th</sup> Ave Kirkland, WA 98033	Address:	11750 NE 118 <sup>th</sup> St Kirkland, WA 98034
Phone:	(206) 794-6339	Phone:	(425) 587-3436
Email:	bbuettner@rcrwa.org	Email:	ekarp@kirklandwa.gov

13. Complete Agreement.

- A) This Agreement contains the final and completely integrated agreement between the parties regarding its subject matter and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto.
- B) No change, alteration, modification, or addition to this Agreement will be effective unless it is in writing and properly signed by both parties hereto.

14. Legal Notice.

Notices to the City of Kirkland shall be sent to the following address:

Eric Karp, Sergeant  
City of Kirkland Police Department  
11750 NE 118<sup>th</sup> St  
KIRKLAND WA 98034  
ekarp@kirklandwa.gov

Notices to Agency shall be sent to the following address:

Brook Buettner, Executive Director  
Regional Crisis Response Agency  
123 5<sup>th</sup> Ave  
Kirkland, WA 98033-6189  
bbuettner@rcrwa.org

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CITY OF KIRKLAND

REGIONAL CRISIS RESPONSE AGENCY

Julie Underwood

Brook Buettner

Julie Underwood (Apr 1, 2024 08:26 PDT)

Julie Underwood, Deputy City Manager

Brook Buettner, Executive Director

Apr 1, 2024

Mar 29, 2024

## EXHIBIT A - SCOPE OF WORK

- A) **Agency & Programs:** REGIONAL CRISIS RESPONSE AGENCY – Mental Health Field Response Services
- B) **Term:** March 1, 2024 - Jun 30, 2025
- C) **Single Point of Contact:** Brook Buettner, Executive Director, [bbuettner@rcrwa.org](mailto:bbuettner@rcrwa.org)
- D) **Program Description:** The Regional Crisis Response program shall consist of the following services:

Crisis Responders shall respond to individuals in social or emotional crisis to include those with symptoms of mental illness, substance use, homelessness, housing issues and more, alongside law enforcement with the objective of reducing violence and use of force, reducing reliance on the crisis and criminal justice systems, and improving people's lives by connecting them to long-term, community-based systems of care.

### Essential Functions:

- Accompany law enforcement during response to 911 calls and provide appropriate interventions to individuals in crisis.
- Follow up, with a police officer, to referrals created by officers who have identified a behavioral health or social service need during a police contact. Referrals can include connecting individuals with long-term mental health or chemical dependency services, basic needs such as food or hygiene items, and assistance to families with a loved one in the involuntary treatment system, among many others.
- Collaborate with outside service providers, working as a multi-disciplinary team to bridge gaps in service and ensure continuity of care.
- Provide local, state and regional resource information, referrals, and advocacy.
- Cultivate and maintain collaborative working relationships with personnel from Bothell, Kirkland, Shoreline, Lake Forest Park, and Kenmore to include police, fire, courts, service providers, schools, and more.
- Collect and maintain detailed and accurate data and case records.
- Operate a vehicle in normal conditions.
- Work variable shifts including nights, weekends, and holidays.

To allow agencies to provide the best and most comprehensive services possible, WASPC is allowing funding to be utilized for staffing of programs by properly credentialed and trained staff, at the following levels, under the stated conditions:

- A) **Mental Health Professional (MHP), as defined by [RCW 71.05.020\(39\)](#):**
- Programs must utilize an MHP as defined in RCW 71.05.020(39) to perform duties established in 36.28A.440(3): "...assist patrolling officers in the field or in an on-call capacity, provide preventive, follow-up, training on mental health field response best

practices, or other services at the direction of the local law enforcement agency.”

- MHPs should prioritize grant funded hours to providing services to individuals in crisis.
- MHPs must provide a minimum of 1 hour per week of direct one-on-one supervision to Non-MHPs as required if the program utilizes non-MHPs.

**B) Non-MHPs**

- Unless licensed to do so, the non-MHP does not provide support or services that would require a license or certification of any kind from the Washington State Department of Health, the Washington State Healthcare Authority, or any other governing body with regulatory authority in Washington State.
  - Individuals not meeting the definition of MHP as defined by RCW 71.05.020(39) may provide services under the following circumstances:
    1. The non-MHP must receive a minimum of 1 hour per week of direct one-on-one supervision by a licensed MHP,
    2. The non-MHP must immediately disengage with an individual that appears to be escalating to a state of acute crisis or agitation that may present a threat to their physical safety and follow any steps identified by agency policy.
    3. Prior to providing services and no less than yearly, the non-MHP must participate in training relevant to all of the following topics:
      - Interacting with and providing social services to individuals with mental health conditions, to include Substance Use Disorder,
      - Program policies and standard operating procedures, Necessary and practical physical safety precautions that must be taken when interacting with community members served by the program,
      - Necessary and practical techniques to avoid work related vicarious trauma and burn-out,
- *Please note that the training listed above is meant to represent a bare minimum standard to which all non-MHPs paid for using funds under this Agreement must adhere. The City and WASPC expect that agencies will ensure that all of these requirements are met.*

**C) Law Enforcement**

The City places no conditions or limitations on the program’s use of sworn law enforcement staff.

**D) Eligibility**

Services assisted with funding under this Exhibit may be limited to residents of the Principal members of the Regional Crisis Response Agency.



**EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT**

The Maximum Compensation payable to Agency is \$669,040. As this is a multi-year award, it is subject to the following restrictions:

The maximum amount payable to the Agency for services rendered in year one (March 1, 2024- June 30, 2024) is \$149,202. Funds that are not utilized from year one WILL NOT carry-over to year two and are no longer able to be claimed by the Agency under any circumstances.

The maximum amount payable to the Agency for services rendered in year one (July 1, 2024- June 30, 2025) is \$519,838. Funds that are not utilized from year two WILL NOT carry-over to any other period and are no longer able to be claimed by the Agency under any circumstances.

The following budget is approved for Mental Health Field Response services reimbursable under this agreement:

**SFY 2023-2025 Approved Budget**

Budget Category	SFY(ear) 1	SFY(ear) 2	Total
	Amount	Amount	
A. Personnel	\$106,065	\$369,106	\$475,171
B. Fringe Benefits	\$43,137	\$150,732	\$193,869
C. Travel			\$0
D. Equipment			\$0
E. Supplies			\$0
F. Consultants/Contracts			\$0
G. Other			\$0
H. Indirect			\$0
I. Julota			\$0
<b>TOTAL SFY 2023-2024 AWARD</b>	<b>\$149,202</b>	<b>\$519,838</b>	<b>\$669,040</b>

**Reimbursement Request**

Agency invoices requesting reimbursement are to be submitted monthly and due on the 10th of the month following completion of the month. The final invoice must be submitted no later than July 7, 2025.

Invoices must describe and document to the City’s and WASPC’s satisfaction a description of the work performed, the progress of the project, fees, and a statement that includes the following language: “We certify pursuant to 2 CFR § 200.201(1)(iii)(3) that the activities described in this invoice and associated report(s) have been completed.” If expenses are invoiced, invoices must provide a detailed breakdown of each type. All invoices will be reviewed and must be approved by the City and WASPC prior to payment.

All payments are made contingent on services provided. Payment will be made, on qualifying, WASPC approved invoices, within 30 days from receipt of invoice (NET 30). If the Agency does not meet the performance goals as required in the Scope, payment for services rendered under the contract may be reduced or withheld.

Invoices for services rendered under this Agreement from March 1, 2024, to June 30, 2024, MUST submitted by the Agency to City by July 7, 2024. The City is under no obligation to pay any claims for the period mentioned above that are submitted on or after July 8, 2024 ("Belated Claims"). Invoices for services rendered under this Agreement from July 1, 2024, to June 30, 2025, MUST submitted by the Agency to the City by July 7, 2025. The City is under no obligation to pay any claims for the period mentioned above that are submitted on or after July 8, 2025 ("Belated Claims"). The City will submit Belated Claims to WASPC in the City's sole discretion. WASPC will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

## **EXHIBIT C – REPORTING REQUIREMENTS**

The Agency shall utilize the data collection tool selected by WASPC, hereinafter referred to as the WASPC Data Collection Tool, which is the JULOTA Reach Software. The Agency must provide sufficient resources to establish the administrative permissions necessary for the WASPC Data Collection Tool to be fully operational at the time field response begins at the agency(ies). The Agency, if it has not already done so, shall execute the JULOTA "SaaS Use Agreement", which will be separately executed between the Agency and JULOTA within 30 days of the execution of this Agreement.

## **EXHIBIT D – ADDITIONAL REQUIREMENTS**

### **1. SCOPE OF CONTRACT AND INCORPORATION OF EXHIBITS**

#### **A. Scope**

The Contract between the parties shall consist of the signature page, each Program/Project Exhibit incorporated into the Contract, all matters and laws incorporated by reference herein, and any written amendments made in accordance with the provisions contained herein. The exhibits attached to this Contract are hereby incorporated by this reference. This Contract supersedes any and all former agreements regarding projects described in the attached Project/Program Exhibit(s). If there is a conflict between any of the language contained in this Contract and any of the language contained in any Project/Program Exhibit in this Contract, the language in this Contract shall control, unless the parties affirmatively agree to the contrary in a writing that has been reviewed and approved by the Kirkland City Attorney's Office. This Contract shall govern the provision of services as agreed by the parties.

#### **B. Mandatory Certifications and Municipal Exemptions from Contract Requirements**

The Agency certifies that it shall comply with the provisions of Sections 17. Subcontracts and Purchases, 20. Executive Board and 27. Miscellaneous Provisions of this Exhibit as incorporated within this Contract.

#### **C. Federal Funds**

The term "federal funds" as used in this Additional Requirement Exhibit means WASPC funds, if applicable, unless the context clearly intends to be specific to federal government funds.

### **2. DURATION OF CONTRACT**

The terms of this Contract shall be in effect from the Start Date (as defined in the Project/Program Exhibit(s)) or the date of execution of this Contract, whichever is earlier, and shall terminate on the Termination Date specified in each Project/Program Exhibit, unless extended to a later date or terminated earlier, pursuant to the terms and conditions of the Contract.

### **3. FUTURE SUPPORT**

The City makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

### **4. COMPENSATION AND METHOD OF PAYMENT**

The City shall reimburse the Agency only for the approved activities specified in each Project/Program Exhibit and the reimbursement amount shall not exceed the amount

specified in each Project/Program Exhibit. Reimbursements will be payable in the following manner.

- A. Start Dates and End Dates for individual projects shall be specified in each Project/Program Exhibit. Costs incurred before the Start Date will not be reimbursed. Costs incurred after the End Date will not be reimbursed.

**5. BUDGET**

- A. The Agency shall apply the funds received from the City under this Contract in accordance with each Project/Program Exhibit including a line item budget, if applicable, set forth Exhibit B, COMPENSATION AND METHOD OF PAYMENT.
- B. The Agency shall request in writing prior approval from the City to revise the line item budget. Supporting documents are necessary to fully explain the nature and purpose of the revision and must accompany each request. All budget revision requests shall be reviewed and approved or denied by the City in writing.
- C. When the cumulative amount of transfers from a line item in any Project/Program Exhibit is expected to exceed ten percent (10%) of that line item, an amendment to the contract shall be executed upon approval.

**6. EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP**

- A. Equipment Purchase

The Agency agrees that equipment purchased with Contract funds at a cost of \$5,000 per item or more and identified in an exhibit as reimbursable, is upon its purchase or receipt, the property of the Agency, City, and/or federal, and/or state government, as specified in the exhibit.

- B. Maintenance of Equipment

The Agency shall be responsible for all such equipment, including the proper care, maintenance, and also including securing and insuring such equipment.

- C. Equipment Returned

The Agency shall ensure that all such equipment is returned to the appropriate government Agency, whether federal, state or City, upon written request of the City.

- D. Right of Access

The Agency shall admit the City Agency's premises for the purpose of marking such property with appropriate government property tags.

- E. Maintenance of Records

The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment purchased with Contract identified funds.

F. Disposition of Equipment

Projects using federal funds shall also comply with the following requirement. If the Agency ceases to use equipment purchased in whole or in part with WASPC funds for the purpose described in this Contract, or if the Agency wishes to dispose of such equipment, the disposition shall be determined under the provisions of 24 CFR § 570 and 2 CFR § 200.313. The Agency agrees that it will contact the City for instructions prior to disposing of, surplus, encumbering or transferring ownership of any equipment purchased in whole or in part with federal funds.

**7. CONTRACT AMENDMENTS**

Either party may request changes to this Contract. Proposed contract changes that are mutually agreed upon shall be incorporated only through written amendments to this Contract. Budget revisions approved by the City pursuant to Section 5, Budget are not required to be incorporated by written amendment, unless the request exceeds the 10% threshold as required by Section 5, Budget.

**8. INTERNAL CONTROL, ACCOUNTING SYSTEMS AND FINANCIAL REPORT SUBMISSION**

A. Internal Control and Accounting

The Agency shall establish and maintain a system of accounting and internal controls that comply with applicable, generally accepted accounting principles and financial and governmental reporting standards as prescribed by the appropriate accounting standards board.

**9. MAINTENANCE OF RECORDS**

A. Scope of Records

The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records specified in each Project/Program Exhibit or otherwise deemed necessary by the City to ensure proper accounting for all Contract funds and compliance with this Contract.

B. Time for Retention of Records

Records required to be maintained in subsection A above shall be maintained for a period of six years after the termination date, unless a different period for records retention is specified in the Project/Program Exhibit.

C. Location of Records/Notice to City

The Agency shall inform the City in writing of the location, if different from the Agency address listed on page one of this Contract, of the aforesaid books, records, documents and other evidence within ten working days of any such relocation.

D. Federal Exceptions to Retention Requirements

Exceptions to the six-year retention period are as follows: (1) Records that are the subject of audit findings, litigation, or claims shall be retained until such findings, litigation or claims have been resolved; and (2) The retention period for real property and equipment records starts from the date of the disposition, replacement, or transfer at the direction of the City.

E. Financial Management Records

Financial records shall identify adequately the source and application of funds for activities within this Contract, in accordance with the provisions of 2 CFR 200. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

**10. EVALUATIONS AND INSPECTIONS**

A. Right of Access to Facilities for Inspection of Records

The Agency shall provide right of access to its facilities, including those of any sub-Agency, to the City, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the activities funded under this Contract. The City shall give advance notice to the Agency in the case of fiscal audits to be conducted by the City.

B. Time for Inspection and Retention

The records and documents with respect to all matters covered by this Contract shall be subject at all times to inspection, review, or audit by the City and/or federal/state officials so authorized by law during the performance of this Contract and six years after the termination date, unless a different period is specified in the Project/Program Exhibit or a longer retention period is required by law.

C. Agreement to Cooperate

The Agency shall cooperate with the City or its agent to assess the Agency's performance under this Contract and to make available all information reasonably required by any such performance measurement and evaluation processes. The results and records of these processes shall be maintained and disclosed in accordance with chapter 42.56 RCW.

## **11. PROPRIETARY RIGHTS**

- A. The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the City. To the extent that any rights in such materials vest initially with the Agency by operation of law or for any other reason, the Agency hereby perpetually and irrevocably assigns, transfers and quitclaims such rights to the City. The City agrees to and does hereby grant to the Agency, irrevocable, nonexclusive, and royalty-free license to use, and create derivative works, according to law, any material or article and use any method that may be developed as part of the work under this Contract.
- B. The Agency shall retain all ownership rights in any pre-existing patentable or copyrightable materials or articles that are delivered under this Contract, but do not originate from the work described herein. The Agency agrees to and does hereby grant to the City a perpetual, irrevocable, nonexclusive, and royalty-free license to use and create derivative works, according to law, any pre-existing material or article and use any method that may be delivered as part of the work under this Contract.
- C. The Agency shall sign all documents and perform other acts as the City deems necessary to secure, maintain, renew, or restore the rights granted to the City as set forth in this section.

## **12. CORRECTIVE ACTION**

### **A. Default by Agency**

If the City determines that the Agency failed to comply with any material terms or conditions of this Contract or the Agency has failed to provide in any manner the work or services (each a "breach") , and if the City determines said that the breach warrants corrective action, the following procedure shall apply.

- i. The City shall notify the Agency in writing of the nature of the breach.
- ii. The Agency shall submit a written corrective action plan describing the specific steps being taken to correct the specified deficiencies (the "corrective action plan"). The corrective action plan shall be submitted to the City within ten business days from the Agency's receipt of the City's notice under this section, unless the City, at its sole discretion, extends in writing the response time. The corrective action plan shall indicate the steps being taken to correct the breach and specify the proposed completion date for curing the breach. The completion date shall not be more than 30 days from the date the City receives the Agency's corrective action plan, unless the City, in its sole discretion specifies in writing an extension to complete the corrective actions.



- iii. The City will determine the sufficiency of the Agency's proposed corrective action plan, then notify the Agency, in writing, of that determination. The City shall have sole discretion in determining the sufficiency of the Agency's corrective action plan.

B. Termination of Contract

If the Agency does not respond within the appropriate time with a corrective action plan, or the Agency's corrective action plan is determined by the City to be insufficient, the City may terminate or suspend this Contract in whole or in part pursuant to Section 13, Termination Subsection B.

C. City Withholding of Payment

In addition, the City may withhold any payment to the Agency or prohibit the Agency from incurring additional obligations of funds until the City is satisfied that corrective action has been taken or completed.

D. No Waiver of Other Remedies

Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 13. Termination or other remedies authorized by law.

**13. TERMINATION**

A. Termination for Convenience

- i. This Contract may be terminated by the City without cause, in whole or in part, prior to the termination date specified in the Project/Program Exhibit, by providing the Agency 30 days advance written notice of the termination.
- ii. In addition to the foregoing, if expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in the Project/Program Exhibit, the City may, upon written notification to the Agency, terminate this Contract in whole or in part.
- iii. If the Contract is terminated as provided above:
  - a. The City shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and
  - b. The Agency shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.

B. Termination for Cause

- i. The City may terminate or suspend this Contract, in whole or in part, upon

seven days advance written notice to the Agency in the event:

The Agency breaches any duty, obligation, or service required pursuant to this Contract and either (a) the corrective action process described in Section 12, Corrective Action fails to cure the breach or (b) the City determines that requiring a corrective action plan is impractical or that the duties, obligations, or services required herein become impossible, illegal, or not feasible.

- ii. If the City terminates the Contract pursuant to this section, the Agency shall be liable for damages, including any additional costs of procurement of similar services from another source.
- iii. If the termination results from acts or omissions of the Agency, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Agency shall return to the City immediately any funds, misappropriated or unexpended, that have been paid to the Agency by the City.
- iv. If expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Section 2, Duration of Contract, the City may, upon seven business days advance written notice to the Agency, terminate this Contract in whole or in part.
- v. If the Contract is terminated as provided in this Subsection:
  - a. The City shall be liable only for payment in accordance with the terms of this Contract for services rendered and authorized purchases made prior to the effective date of termination; and
  - b. The Agency shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.
- vi. Funding or obligation under this Contract is conditional upon appropriation by the City Council of sufficient funds to support the activities described in the Contract. If such appropriation is not approved, this Contract shall terminate at the close of the current appropriation.

C. Waiver

Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract at law or in equity that either party may have if any of the obligations, terms and conditions set forth in this Contract are breached by the other party.

#### **14. ENTIRE CONTRACT/WAIVER OF DEFAULT**

The parties agree that this Contract is the complete expression of the described subject matter and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of this Contract. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the City, which shall be attached to the original Contract.

#### **15. HOLD HARMLESS AND INDEMNIFICATION**

- A. In providing services under this Contract, the Agency is an independent Agency. The Agency shall be responsible, through the City as its fiscal agent, for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a City employee under state or local law.
- B. The Washington Association of Sheriffs and Police Chiefs and the City, except as the Agency's fiscal agent, assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Agency, its employees, and/or others by reason of this Contract. The Agency shall protect, indemnify, defend, and save harmless the City and the Washington Association of Sheriffs and Police Chiefs and each of their officers, agents, and employees (together, "Indemnified Parties") from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Agency's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Agency of work, services, materials, or supplies by Agency employees or other suppliers in connection with or support of the performance of this Contract.
- C. The Agency agrees that it is financially responsible for and will repay the Indemnified Parties all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Agency, its officers, employees, agents, and/or representatives. This duty to repay the City shall not be diminished or extinguished by the termination of the Contract.
- D. To the maximum extent permitted by law, the Agency shall protect, defend, indemnify, and save harmless the Indemnified Parties from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts, errors, or omissions or misconduct of the Agency, its officers, employees, subagencies and/or agents, in its performance or non-performance of its obligations under this Contract. The Agency agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or

on behalf of, any of its employees or agents. For this purpose, the Agency, by mutual negotiation, hereby waives, as respects the Indemnified Parties only, any immunity that would otherwise be available against such claims under any industrial insurance act, including [Title 51 RCW](#), other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Agency shall protect and assume the defense of the Indemnified Parties in all legal or claim proceedings arising out of, in connection with, or incidental to its indemnity obligation; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the Indemnified Parties on account of such litigation or claims. [Title 51 RCW](#). If the Indemnified Parties incurs any judgment, award, and/or cost arising therefrom including reasonable attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Agency.

- E. To the maximum extent permitted by law, the City shall protect, defend, indemnify, and save harmless the Agency, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the City, its officers, employees, and/or agents, in its performance and/or non-performance of its obligations under this Contract. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects the Agency only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the Agency incurs any judgment, award, and/or cost arising therefrom including reasonable attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the City.
- F. For purposes of this section, claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
- G. The indemnification, protection, defense, and save harmless obligations contained herein shall survive the expiration, abandonment, or termination of this Contract.

## **16. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

- A. Compliance with Laws and Regulations. The Agency shall comply fully with all applicable federal, state and local laws, ordinances, Presidential Executive Orders and regulations that prohibit discrimination to the extent applicable. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. The Agency shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.
- B. Compliance with Section 504 of the Rehabilitation Act of 1973 as amended (Section 504)

and the American Disabilities Act of 1990 as amended (ADA)

- a. Pursuant to Title II of the ADA and Section 504 the City must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by Agencies. The Agency agrees that it shall provide all programs, services and activities to City employees or members of the public under this Contract in the same manner as City is obligated to under Title II of the ADA, and Section 504 and shall not deny participation or the benefits of such services, programs or activities to people with disabilities on the basis of such disability. Failure to comply with this section shall be a material breach of, and grounds for, the immediate termination of this Contract.
- i.
  - a. The Agency agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by KCC 12.16; and
  - ii.
    - b. The Agency shall not discriminate against persons with disabilities in providing the work under the Contract. In any subcontracts for the programs, activities and services under their contract or agreement, the Agency shall include the requirement that the subagency provide to persons with disabilities access to programs, activities and services provided under the contract or agreement as required by the disability access laws as defined by KCC 12.16, that the subagency shall not discriminate against persons with disabilities in providing the work under the Contract and that the subagency shall provide that the City is a third party beneficiary to that required provision.
- C. Sanctions for Violations
  - a. Any violation of the mandatory requirements of the provisions of this section shall be a material breach of contract for which the Agency may be subject to damages, withholding payment and any other sanctions provided for by the Contract and by applicable law.
- D. Additional Federal Nondiscrimination Requirements. The Agency shall comply with all applicable federal laws prohibiting discrimination, including the following:
  - a. Presidential Executive Order 11063 as amended and implementing regulations at 24 CFR Part 107;
  - b. The Americans with Disabilities Act (42 USC 1213; 47 USC 155, 201, 218 and 225); and
  - c. Section 504 of the Rehabilitation Act of 1973 and regulations at 24 CFR Part 8.
- E. Prohibited Discriminatory Actions
  - a. Except where expressly authorized by federal law, the Agency may not, under any program or activity to which this Contract applies, directly or through contractual or other arrangements, discriminate on the grounds of age, color, creed, familial status, marital status, nationality, religion, race, sex, sexual

orientation, or the presence of any, physical, mental or sensory disability.

- b. Discriminatory actions may include but are not limited to the following:
- F. Denying any person access to facilities, services, financial aid or other benefits provided under the program or activity;
- G. Denying any person services due to limited English proficiency;
- H. Providing any person with facilities, services, financial aid or other benefits, which are different, or are provided in a different form from that provided to others under the program or activity;
- I. Subjecting any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit under the program or activity;
- J. Restricting in any way access to or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
- K. Treating any person differently from others in determining whether the person satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity; and
- L. Denying any person any opportunity to participate in a program or activity as an employee.
  - a. The Agency shall not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of age, color, familial status, nationality, race, religion, sex, or sexual orientation; or mental, physical, or sensory disability; or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular age, color, familial status, nationality, race, religion, sex, or sexual orientation; or the presence of any mental, physical, or sensory disability.

#### M. Employment Projections

- a. In all solicitations under this Contract, the Agency shall state that all qualified applicants will be considered for employment. The words "equal opportunity employer" in advertisements shall constitute compliance with this section.

## 17. SUBCONTRACTS AND PURCHASES

### A. Subcontract Defined

"Subcontract" shall mean any agreement between the Agency and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.

### B. Writing Required

Any work or services assigned or subcontracted hereunder shall be in writing and must be approved by the City as provided in Paragraph 9, Assignment. The Agency agrees that it is as fully responsible to the City for the acts and omissions of its subcontractors and their employees and agents, as it is for the acts and omissions of its own employees and agents, as specified in Subsection 15. Hold Harmless and Indemnification Subsection C.

The rejection or approval by the City of any Subcontractor or the termination of a Subcontractor will not relieve Agency of any of its responsibilities under the Contract, nor be the basis for additional charges to the City.

The City has no contractual obligations to any Subcontractor or vendor under contract to the Agency. Agency is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

### C. Required Contract Terms

The Agency shall include the applicable provisions of Sections 15. Hold Harmless and Indemnification, 16. Nondiscrimination and Equal Employment Opportunity, and 17, Subcontracts and Purchases in every subcontract or purchase order for goods or services which are paid for in whole or in part with funds provided under this Contract. The Agency agrees to include the following language verbatim in every subcontract, provider agreement, or purchase agreement for services, which relate to the subject matter of this Contract:

"Subcontractor shall protect, defend, indemnify, and hold harmless City, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employee, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that City is a third- party beneficiary to its Contract with the Agency and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph."

Projects using federal funds must also comply with subsections D, E, and F.

### D. Debarment

The Agency certifies that neither the Agency nor any person or entity with a controlling interest in the Agency is under suspension, debarment, voluntary exclusion or determination of ineligibility from participation in federal assistance programs under Presidential Executive Order 12549 or 12689, "Debarment and Suspension". The Agency further certifies that neither the Agency nor any person or entity with a controlling interest in the Agency has any proceeding pending to suspend, debar, exclude or determine them ineligible from participation in federal assistance programs under Presidential Executive Order 12549 or 12689. The Agency shall not make any award at any time to any Agency, which is debarred, suspended or excluded, from participation in federal assistance programs under Presidential Executive Order 12549, "Debarment and Suspension".

The Agency shall ensure that all subcontractors receiving any federal funds pursuant to this agreement have not been disbarred or suspended from federal contract participation. This may be done by checking the System for Award Management at <https://www.sam.gov>, which lists all suspended and debarred entities.

#### E. Subcontracting Requirements

An Agency which receives federal funds under this Contract also shall include the following sections in every subcontract or purchase order for goods and services which are paid in whole or in part with funds provided under this Contract: Sections 4, Compensation and Method of Payment, Section 15, Hold Harmless and Indemnification Subsection B., Section 16, Nondiscrimination and Equal Employment Opportunity, and 19, Conflict of Interest Subsection B.

If the Agency is a nonprofit corporation, it agrees to comply with procurement requirements specified in 24 CFR §§ 84.40 through 84.48 or as otherwise provided in the Project/Program Exhibit. The regulations at 24 CFR § 85.36 (b) through (g) and 24 CFR §§ 84.40 through 84.48, require that all goods and services, irrespective of cost, be procured using a competitive process.

#### F. Failure to Comply is Default

Failure by the Agency to require compliance with the above terms and conditions in subcontracts shall constitute a breach of this Contract.



**18. NONDISCRIMINATION IN SUBCONTRACTING PRACTICES**

Projects using federal funds shall comply with the following requirements: In soliciting subcontractors to supply goods or services for the activities under this Contract, the Agency shall comply with 24 CFR § 85.36(e) as amended if the Agency is a municipal corporation or an Agency of the State of Washington, and 24 CFR § 84.44(b)(1)-(5) if the Agency is a nonprofit corporation. In accordance with these regulations, the Agency shall take all necessary affirmative steps to assure MWBEs and labor surplus area firms are used as subcontractors when possible and as applicable. Affirmative steps shall include those actions specified above in this section of the Contract.

**19. CONFLICT OF INTEREST**

- A. Entering into this Contract with the City requires that the Agency agree to abide by certain provisions of the City Employee Code of Ethics, including those relating to conflicts of interest and the employment of current or former City employees, detailed in chapter 3.82 KMC. Failure to comply with such provisions shall be a material breach of Contract and may result in termination of this Contract and subject the Agency to remedies stated in this contract, or otherwise available to the City at law or in equity.
- B. The Agency shall abide by the provision of 2 CFR 200 and 24 CFR § 570.611, if applicable, and by the following:
  - i. The Agency shall maintain a written code or standards of conduct that shall govern the performance of its officer, employees or agents engaged in the award and administration of contracts supported by funds under this Contract;
  - ii. No employee, director, officer or agent of the Agency shall participate in the selection or in the award, or administration of a contract supported by funds under this contract if a conflict of interest, real or apparent, would be involved. By way of example, such a conflict would arise if such a person, or his or her employer, immediate family member or partner has financial or other interest in the entity selected; and
  - iii. No covered persons who exercise or have exercised any functions or responsibilities with respect to any Contract-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may have or obtain a financial interest in any contract, subcontract or agreement regarding a Contract-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure and for one year thereafter. For purposes of this paragraph, "covered persons" includes any person who is an employee, agent, consultant, officer, or director of the Agency or the City.

## **20. EXECUTIVE BOARD**

- A. If the Agency is incorporated, it must have an active, legally constituted Executive Board in accordance with the requirements of RCW Chapters 23B or 24, to the extent applicable.
- B. The following additional requirements shall apply to the agencies that qualify as non-profit organizations under USC, Title 26, Subtitle A, Chapter 1, Subchapter F, Part 1, Section 501(C)(3).
  - i. The Agency shall have a Executive Board that shall be comprised of neither employees nor relatives of employees, officers, or directors of the Agency. For the purposes of this section, a relative is defined as husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, grandparent, grandchild, uncle, aunt, domestic partner and child of domestic partner. In addition, the relatives of a domestic partner shall be considered relatives to the same extent such relatives would be included in this section, as if the employee and domestic partner were married.
  - ii. The Executive Board shall meet regularly.
  - iii. The Executive Board shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501(C)(3) status, and addresses issues regarding gifts, financial gain, and improper use of position.

## **21. CONFIDENTIALITY**

The Agency agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

## **22. PERSONAL INFORMATION – NOTICE OF SECURITY BREACH**

- A. If the Agency maintains computerized or other forms of data that includes personal information owned by the City, the Agency shall notify the City of any breach of the security of the data immediately following discovery if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person in accordance with RCW 42.56.590 (2).
- B. The Agency shall provide all information requested by the City including the following in accordance with RCW 42.56.590, KCC 2.14.030, the City Information Privacy Policy and any other applicable federal, state and local statute:
  - i. Circumstances associated with the breach;

- ii. Actions taken by the Agency to respond to the breach; and
- iii. Steps the Agency shall take to prevent a similar occurrence.

This information shall be provided in a format requested by the City.

- C. The City may at its sole discretion, require the Agency to contact the appropriate law enforcement agency and to provide the City a copy of the report of the investigation conducted by the law enforcement agency. The Agency shall also provide the City with any information it has regarding the security breach.
- D. The Agency shall be responsible for notifying individuals whose personal information may have become available to unauthorized users through a security breach. The Agency shall also be responsible for any cost associated with notifying the affected individuals. This notification must be in accordance with RCW 42.56.590 (7).
- E. If the Agency demonstrates that the cost of providing notice would exceed \$250,000, or that the potentially affected persons exceeds 500,000, or the Agency does not have sufficient contact information, substitute notice shall consist of the following in accordance with RCW 42.56.590(4)(c).
  - i. E-mail notice when the Agency has an e-mail address for the subject persons;
  - ii. Conspicuous posting of the notice on the Agency's web site page, if the Agency maintains one; and
  - iii. Notification to major City-wide media.
- F. For purpose of this section, "personal information" means the same as defined in RCW 42.56.590:
  - i. An individual's first name or first initial and last name in combination with any one of the following data elements, when either the name or the data elements are not encrypted: social security number; driver's license number or Washington identification card number; or
  - ii. Account number or credit or debit card number, in combination with any required security code; access code, or password that would permit access to an individual's financial account.

**23. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)**

Terms used in this section shall have the same meaning as those terms in the Privacy Rule, 45 CFR Parts 160 and 164.

A. Obligations and Activities of the Agency

- i. The Agency agrees not to use or disclose protected health information other than as permitted or required by this Contract, HIPAA and the Health Information Technology for Economic and Clinical Health Act (HITECH). The Agency shall use and disclose protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR § 164.504(e). The Agency is directly responsible for full compliance with the privacy provisions of HIPAA and HITECH that apply to business associates.
- ii. The Agency agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information that it creates, receives, maintains, or transmits on behalf of the City as required by 45 CFR, Part 164, Subpart C. The Agency is directly responsible for compliance with the security provisions of HIPAA and HITECH to the same extent as the City.
- iii. Within two (2) business days of the discovery of a breach as defined at 45 CFR § 164.402 the Agency shall notify the City of any breach of unsecured protected health information. The notification shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the Agency to have been, accessed, acquired, or disclosed during such breach; a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; a description of the types of unsecured protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); any steps individuals should take to protect themselves from potential harm resulting from the breach; a brief description of what the Agency is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; the contact procedures of the Agency for individuals to ask questions or learn additional information, which shall include a toll free number, an e-mail address, Web site, or postal address; and any other information required to be provided to the individual by the City pursuant to 45 CFR § 164.404, as amended. A breach shall be treated as discovered in accordance with the terms of 45 CFR § 164.410. The information shall be updated promptly and provided to the City as requested by the City.
- iv. The Agency agrees to mitigate, to the extent practicable, any harmful effect that is known to the Agency of a use or disclosure of protected health information by the Agency in violation of the requirements of this Contract or the law.

- v. The Agency agrees to report in writing all unauthorized or otherwise improper disclosures of protected health information or security incident to the City within two days of the Agency knowledge of such event.
- vi. The Agency agrees to ensure that any agent, including a subAgency, to whom it provides protected health information received from, or created or received by the Agency on behalf of the City, agrees to the same restrictions and conditions that apply through this Contract to the Agency with respect to such information.
- vii. The Agency agrees to make available protected health information in accordance with 45 CFR § 164.524.
- viii. The Agency agrees to make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.526.
- ix. The Agency agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by the Agency on behalf of City, available to the Secretary of the U.S. Department of Health and Human Services, in a reasonable time and manner for purposes of the Secretary determining City's compliance with HIPAA, HITECH or this Contract.
- x. The Agency agrees to make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528. Should an individual make a request to the City for an accounting of disclosures of his or her protected health information pursuant to 45 CFR § 164.528, Agency agrees to promptly provide an accounting, as specified under 42 U.S.C. § 17935(c)(1) and 45 CFR §164.528, of disclosures of protected health information that have been made by the Agency acting on behalf of the City. The accounting shall be provided by the Agency to the City or to the individual, as directed by the City.
- xi. To the extent the Agency is to carry out one or more of the covered entity's obligations under Subpart E of 45 CFR § 164, the Agency shall comply with the requirements of Subpart E that apply to the City in the performance of such obligations.

B. Permitted Uses and Disclosures by Business Associate

- i. The Agency may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, City as specified in this Contract, provided that such use or disclosure would not violate HIPAA if done by City or the minimum necessary policies and procedures of City.

C. Effect of Termination

- i. Except as provided in paragraph C.2. of this section, upon termination of this Contract, for any reason, the Agency shall return or destroy all protected health

information received from the City or created or received by the Agency on behalf of the City. This provision shall apply to protected health information that is in the possession of subAgency or agents of the Agency. The Agency shall retain no copies of the protected health information.

- ii. In the event the Agency determines that returning or destroying the protected health information is infeasible, the Agency shall provide to City notification of the conditions that make return or destruction infeasible. Upon notification that return or destruction of protected health information is infeasible, the Agency shall extend the protections of the Contract to such protected health information and limit further uses and disclosure of such protected health information to those purposes that make the return or destruction infeasible, for so long as the Agency maintains such protected health information.

D. Reimbursement for Costs Incurred Due to Breach

- i. Agency shall reimburse the City, without limitation, for all costs of investigation, dispute resolution, notification of individuals, the media, and the government, and expenses incurred in responding to any audits or other investigation relating to or arising out of a breach of unsecured protected health information by the Agency.

**24. NOTICES**

Whenever this Contract provides for notice by one party to another, such notice shall be in writing; and directed to each party's contact representative indicated within the contract exhibits. Any time within which a party must take some action shall be computed from the date any associated required notice is received by that party.

**25. POLITICAL ACTIVITY PROHIBITED**

A. No Partisan Activity

None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

B. All Projects using federal funds shall also comply with the following subsection:

Certification Regarding Lobbying

The Agency certifies, to the best of its knowledge and belief, that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the

making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subAgencys shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **26. FORCE MAJEURE**

"Force Majeure" means an event or events beyond the parties' reasonable control, incurred not as a product or result of the negligence of the afflicted party, and which have a materially adverse effect on the ability of such party to perform its obligations as detailed in this Contract. Force Majeure events may include, but are not limited to: Acts of God or Nature; war; civil, military, public, or industrial disturbances; acts or threats of terrorism; epidemics, fire, flood or other casualty; labor difficulties, shortages of labor or materials or equipment; government regulations; delay by government or regulatory agencies; shutdowns for purpose of emergency repairs, and/or unusually severe weather.

### **A. No Breach if Force Majeure Applies:**

Neither party shall be considered in breach of this Contract to the extent that performance of their respective obligations is prevented by a Force Majeure event upon giving notice and reasonably full particulars to the other party.

### **B. Duty to Minimize Disruption and Give Notice:**

Parties maintain an express duty to minimize the disruption caused by Force Majeure, and shall, as soon as reasonably practicable, give notice to the other party of the nature and impact of the Force Majeure. Irrespective of any extension of time, if the

effect of an event or series of events continues for a period of 180 days, either the City or the Agency may give to the other a notice of suspension or termination.

C. Extension of Time:

Should Force Majeure events delay the Agency's completion of the deliverables and performance commitments, the Agency may be entitled to an extension for the time for completion. Any extension must be approved in writing by the City.

D. Suspending Performance:

Should a Force Majeure event prevent the Agency from completing deliverables or performing commitments in this Contract, the completion or performance shall be suspended only for the time and to the extent commercially practicable to restore normal operations. Further, the Agency and the City shall endeavor to continue to perform their contractual obligations to the extent reasonably practicable and will work to adjust deliverables or performance commitments as needed to continue the provision of services during the Force Majeure event. Agency may be reimbursed for any costs incurred mitigating adverse impacts of the Force Majeure, and may be compensated for any partial work that has been completed.

## **27. MISCELLANEOUS PROVISIONS**

A. Severability.

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

B. Remedies.

Not Exclusive. No provision of this Contract precludes the City from pursuing any other remedies for the Agency's failure to perform its obligations.

C. No Third Party Beneficiaries.

Except for the parties to whom this Contract is assigned in compliance with the terms of this Contract, there are no third party beneficiaries to this Contract, and this Contract shall not impart any rights enforceable by any person or entity that is not a party thereto.

This Contract shall be governed by and construed to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court or U.S. District for the Western District of Washington, in Seattle.



**28. SUPPLANTING**

Any WASPC Funds made available under this Contract to provide public mental health services shall not be utilized by the Agency to reduce or replace the local financial support currently being provided to public service programs.

**29. DRUG FREE WORKPLACE CERTIFICATION AND OTHER FEDERAL REQUIREMENTS**

A. Drug-Free Workplace Certification

The Agency certifies that it is in compliance with the Drug-Free Workplace Act of 1988 (42 U.S.C 701) and regulations set forth at 24 CFR part 24, subpart F.

B. Other Federal Requirements

The absence of mention in this Contract of any other federal requirements that apply to the award and/or expenditure of the federal funds made available by this Contract is not intended to indicate that those federal requirements are not applicable to Agency activities. The Agency shall comply with all other federal requirements relating to the expenditure of federal funds, including but not limited to, the Hatch Act (5 USC Chapter 15) regarding political activities.

**30. CONSTITUTIONAL PROHIBITION**

In accordance with the First Amendment of the United States Constitution, Article 1, Section 11 of the Washington State Constitution, and separation of church and state principles, as a general rule, funds received under this Contract may not be used for religious activities. Except where otherwise allowed by federal law, the following restrictions and limitations apply to the use of WASPC funds:

Agency may not engage in inherently religious activities, such as worship, religious instruction or proselytization, as part of the assistance funded under this Contract. If the Agency conducts religious activities, the activities must be offered separately, in time and location, from the assistance funded under this Contract, and participation must be voluntary for the beneficiaries of the assistance;

In performing under this Contract, the Agency shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.










# Final Approved RCR Subcontract Agreement 3.2024.v2


Final Audit Report


2024-04-01


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